

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 SENATE BILL 415

By: Anderson

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6 AS INTRODUCED

7 An Act relating to depositions; amending 12 O.S.
8 2011, Section 3232, which relates to use of
9 depositions in court proceedings; clarifying persons
designated to testify under certain circumstances;
and providing an effective date.

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12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. AMENDATORY 12 O.S. 2011, Section 3232, is
14 amended to read as follows:

15 Section 3232. A. USE OF DEPOSITIONS. At the trial or upon the
16 hearing of a motion or an interlocutory proceeding, any part or all
17 of a deposition, so far as admissible under the Oklahoma Evidence
18 Code applied as though the witness were then present and testifying,
19 may be used against any party who was present or who was represented
20 at the taking of the deposition or who had reasonable notice
21 thereof, in accordance with any of the following provisions:

22 1. Any deposition may be used by any party for the purpose of
23 contradicting or impeaching the testimony of deponent as a witness,
24 or for any other purpose permitted by the Oklahoma Evidence Code;

1 2. The deposition of a party or of anyone who at the time of
2 taking the deposition was an officer, director or managing agent, or
3 a person designated under paragraph ~~6~~ 5 of subsection C of Section
4 3230 or subsection A of Section 3231 of this title to testify on
5 behalf of a public or private corporation, partnership or
6 association or governmental agency which is a party may be used for
7 any purpose;

8 3. The deposition of a witness, whether or not a party may be
9 used for any purpose if the court finds:

- 10 a. That the witness is dead, or
- 11 b. That the witness does not reside in the county where
12 the action or proceeding is pending or is sent for
13 trial by a change of venue or the witness is absent
14 therefrom, unless it appears that the absence of the
15 witness was procured by the party offering the
16 deposition, or
- 17 c. That the witness is unable to attend or testify
18 because of age, illness, infirmity or imprisonment, or
- 19 d. That the party offering the deposition has been unable
20 to procure the attendance of the witness by subpoena,
21 or
- 22 e. That the witness is an expert witness, who for
23 purposes of this section is a person educated in a
24 special art or profession or a person possessing

1 special or peculiar knowledge acquired from practical
2 experience, or

3 f. Upon application and notice, that such exceptional
4 circumstances exist as to make it desirable, in the
5 interest of justice and with due regard to the
6 importance of presenting the testimony of witnesses
7 orally in open court, to allow the deposition to be
8 used.

9 Nothing in this paragraph shall be construed to limit the
10 authority of the appropriate office to issue a subpoena to compel an
11 expert witness to appear in the same manner as any other witness;

12 4. If only part of a deposition is offered in evidence by a
13 party, an adverse party may require the introduction of any other
14 part which ought in fairness to be considered with the part
15 introduced, and any party may introduce any other parts.

16 Substitution of parties pursuant to Section 1081, 1082, 1083 or
17 2025 of this title does not affect the right to use depositions
18 previously taken. When an action has been brought in this state or
19 in any court of the United States or of any other state and another
20 action involving the same subject matter is afterward brought
21 between the same parties or their representatives or successors in
22 interest, all depositions lawfully taken and duly filed in the
23 former action may be used in the latter as if originally taken
24 therefor.

1 A deposition previously taken may also be used as permitted by
2 the Oklahoma Evidence Code.

3 B. OBJECTIONS TO ADMISSIBILITY. Subject to the provisions of
4 subsection B of Section 3228 of this title and paragraph 3 of
5 subsection D of this section, objection may be made, at the trial or
6 hearing, to receiving in evidence any deposition or part thereof for
7 any reason which would require the exclusion of the evidence if the
8 witness were then present and testifying.

9 C. FORM OF PRESENTATION. Except as otherwise directed by the
10 court, a party offering deposition testimony pursuant to this
11 section may offer it in stenographic or nonstenographic form, but,
12 if in nonstenographic form, the party shall also provide the court
13 with a transcript of the portions so offered.

14 D. EFFECT OF ERRORS AND IRREGULARITIES IN DEPOSITIONS.

15 1. AS TO NOTICE. All errors and irregularities in the notice
16 for taking a deposition are waived unless written objection is
17 promptly served upon the party giving the notice.

18 2. AS TO DISQUALIFICATION OF OFFICER. Objection to taking a
19 deposition because of disqualification of the officer before whom it
20 is to be taken is waived unless made before the taking of the
21 deposition begins or as soon thereafter as the disqualification
22 becomes known or could be discovered with reasonable diligence.

23 3. AS TO TAKING OF DEPOSITION.
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1 a. Objections to the competency of a witness or to the
2 competency, relevancy or materiality of testimony are
3 not waived by failure to make them before or during
4 the taking of the deposition, unless the ground of the
5 objection is one which might have been obviated or
6 removed if presented at that time.

7 b. Errors and irregularities occurring in the manner of
8 the oral examination in the taking of the deposition,
9 in the form of the questions or answers, in the oath
10 or affirmation, or in the conduct of parties, and
11 errors of any kind which might be obviated, removed or
12 cured if promptly presented, are waived unless
13 seasonable objection thereto is made at the taking of
14 the deposition.

15 c. Objections to the form of written questions submitted
16 under Section 3231 of this title are waived unless
17 served in writing upon the party propounding them
18 within the time allowed for serving the succeeding
19 cross or other questions or within five (5) days after
20 service of the last questions authorized.

21 4. AS TO COMPLETION AND RETURN OF DEPOSITION. Errors and
22 irregularities:

23 a. in the manner in which the testimony is transcribed or
24 recorded, or

1 b. in the manner in which the deposition is prepared,
2 signed, certified, sealed, endorsed, transmitted,
3 filed, or otherwise dealt with by the officer under
4 Sections 3230 and 3231 of this title

5 are waived unless a motion to suppress the deposition or some part
6 thereof is made with reasonable promptness after such defect is, or
7 with due diligence might have been, ascertained.

8 SECTION 2. This act shall become effective November 1, 2013.

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